

**APPROVED**

**STATE ADVISORY COUNCIL ON THE  
EDUCATION OF CHILDREN WITH DISABILITIES**

**November 2, 2007  
Carmel Clay Educational Service Center  
Indianapolis, IN**

**ADVISORY COUNCIL MEMBERS PRESENT:**

B. Marra, G. Bates, R. Burden, D. Downer, C. Endres, K. Farrell, D. Geeslin, J. Hammond, B. Henson, M. Johnson, R. Kirby, B. Kirk, G. McAloon, K. Mears, J. Nally, M. Ramos, D. Schmidt, J. Swaim, J. Swiss, S. Tilden, S. Yoder

**ADVISORY COUNCIL MEMBERS NOT PRESENT:**

C. H. Hansen, B. Lewis, C. Shearer, T. Wyatt,

**INDIANA DEPARTMENT OF EDUCATION (DEL) STAFF PRESENT:**

K. Bassett, N. Brahm, N. Confer, S. Knoth, B. Reynolds

**VISITORS:**

Jennifer Akers (Parent), Liz Freeman Floyd (Autism Coalition), Lynn Gosser (Representing ICASE), Vendetta Gutshall (Representing ICASE), Margaret Jones (Parent), Kathryn Lee (Indiana Civil Rights Commission), Loui Lord Nelson (R.A.I.S.E.), Patricia Pierce (NISEC),

**INTERPRETERS:**

Charlotte Winston  
Lisa Warren

**MEETING**

D. Schmidt opened the meeting at 9:52 a.m.

K. Farrell moved to accept the minutes as a correct document. Jim Hammond seconded. Motion carried.

The minutes from the October 17, 2007, meeting was approved as a correct document.

## **Article 7 Revisions Comments from Public**

L. Gosser with Grant County Special Education Cooperative addressed the Council on behalf of the Indiana Council of Administrators of Special Education (ICASE). The members of ICASE distributed a handout for the Council for review. L. Gosser asked that the Council consider the input and ideas as they prepare to vote on final draft language for Article 7.

J. Hammond indicated that all comments are well-conceived. He made comment that the Council deliberated on the age for a child to exit special education and asked if ICASE considered the fiscal impact of the proposed change to Article 7 language. Discussion ensued with regard to fiscal impact and the student services provided after the student exits school.

P. Pierce addressed the Council on behalf of Northwest Indiana Special Education Cooperative. She asked the Council to consider leaving Response to Intervention (Rtl) out of Article 7 so that litigation on issues concerning Rtl will not become a special education responsibility. P. Pierce also made comment to concerns that have been previously presented from the Northwest Indiana Special Education Cooperative.

D. Downer responded to P. Pierce's comments. She shared that she supports the language for Rtl and early intervention. Discussion ensued with regard to Rtl and early intervention and evaluations.

V. Gutshall addressed the Council on behalf of ICASE and discussed Rtl and special education. She agrees that Rtl should be in Article 4 and Article 7 because it holds the schools responsible. She also addressed the issue of evaluation timelines.

## **Article 7 Revisions**

### **Discussion**

B. Marra updated the Council with regard to his latest meeting with the State Board Deregulation Subcommittee. He said that after the draft is submitted, the public hearings may take place in February. He indicated that the new Article 7 may be promulgated for the beginning of the 2008-2009 school year.

B. Marra indicated that Rtl was also discussed and that no matter where Rtl is placed, it is important that it is included. He added Dr. Reed has submitted an eleven member team from the IDOE to participate in a national conference regarding Rtl in December of 2007.

B. Marra stated that the next meeting of the Council will be on Friday, November 30, 2007.

B. Marra reviewed the items that will not be voted on at today's meeting.

### **RULE 33 GENERAL PROVISIONS**

#### **511 IAC 7-33-1 Scope**

J. Hammond moved to accept the rule as presented. D. Geeslin and J. Nally seconded. R. Kirby asked if the language "but less than 22 years of age" needed to be amended. N. Brahm indicated that if the Council wanted to accept the language at 22 then yes, it could be amended. J. Hammond withdrew his motion (concurred with by both J. Nally and D. Geeslin)

N. Brahm presented language for Sec. 1 (a). S. Yoder moved to accept the language at 511 IAC 7-33-1 with amendments to the language. J. Swiss seconded.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

#### **511 IAC 7-33-2 Special education programs, organization and administrative structures**

J. Hammond moved to accept Rule 33, Section 2 as presented. D. Geeslin seconded. J. Hammond withdrew the motion. Accepted by D. Geeslin. J. Hammond moved to accept Rule 33, Subsection 2(b). R. Burden seconded.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

R. Kirby moved to accept the remainder of the language at Rule 33, Subsection 2 as amended with the language approved at Subsection 1. J. Hammond seconded.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

R. Kirby moved to amend language throughout Article 7 to read: "are at least three (3) years of age, but less than twenty-two (22) years of age unless the case conference committee determines that the student will leave school earlier." S. Tilden seconded.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-33-3 Other public agencies' special education programs

J. Swiss moved to accept the language of 511 IAC 7-33-3. Kathy Mears seconded.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

S. Yoder made a friendly amendment to add (8) to include the Department of Child Services. C. Endres seconded.

511 IAC 7-33-4 Use of public and private insurance

J. Hammond moved to accept language at 511 IAC 7-33-4 as written. K. Farrell seconded.

17 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

#### **RULE 34 NONPUBLIC SCHOOLS OR FACILITIES**

511 IAC 7-34-1 Special education and related services for parentally placed students in nonpublic schools or facilities.

K. Mears moved to accept the language as presented. S. Tilden seconded.

18 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-34-2 Child Find.

D. Geeslin moved to accept language as written. K. Farrell seconded.

18 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-34-3 Educational evaluations for parentally placed nonpublic school students attending nonpublic schools outside the school corporation of legal settlement

K. Farrell moved to accept language as presented. J. Nally seconded.

18 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-34-4 Consultation with nonpublic school representatives and representative of parents

K. Mears moved to accept language as presented. C. Endres seconded.

18 Approved; 0 Opposed; 0 Abstentions.

Motion Carried

511 IAC 7-34-5 Decisions regarding services provided by the public agency and service plans

J. Nally moved to accept language as presented. K. Farrell seconded.

18 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-34-6 Due process hearings and complaints

J. Hammond moved to accept language as presented. B. Henson seconded.

17 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-34-7 Requirements pertaining to Part B Funds

R. Burden moved to accept language as presented. S. Tilden seconded.

17 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-34-8 Requirements pertaining to services, location of services, and transportation

J. Nally moved to accept the language as presented. K. Mears seconded.

R. Burden asked for clarification at subsection (d) as to when it would not be required. N. Brahm indicated that there would not be a requirement to provide transportation from the nonpublic school to the student's home.

17 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

#### 511 IAC 7-34-9 Equipment and Supplies

J. Nally moved to accept the language as presented. K. Farrell seconded.

17 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-34-10 Reimbursement for parent's unilateral enrollment of students in nonpublic schools or facilities when the public agency's provision of a free appropriate public education is in dispute

S. Tilden moved to accept the language as presented. K. Farrell seconded.

J. Swaim asked for clarification on the court case listed in the notes for this section. N. Brahm said that currently the Supreme Court is split on this, but we should be safe with whatever decision they render.

18 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

### **RULE 35 PROGRAM AND PLANNING**

#### 511 IAC 7-35-1 Comprehensive plan

K. Farrell moved to accept the language as presented. K. Mears seconded.

18 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

#### 511 IAC 7-35-2 Program monitoring

J. Swiss moved to accept the language as presented. D. Geeslin and G. Bates seconded.

18 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-35-3 ~~Technical assistance and Training~~ Supports for public agency personnel

R. Burden moved to accept the language as presented. K. Mears seconded.

K. Farrell questioned the language at subsection 2 as to what the intended outcomes would look like. B. Marra indicated that the DEL investigated a complaint where the teacher had received training yet the teacher continued to punish the student even though the behaviors were due to the child's disability. The teacher basically refused to modify their behavior in light of the child's needs. K. Farrell asked whether the outcomes are for the student or for the personnel. The answer was both. K. Farrell asked if the outcomes would arise from a manifestation review. She would like to amend this language but she would like to see what the current language at CSPD states. The chair asked whether R. Burden would like to remove the motion. R. Burden indicated that he would like further discussion before withdrawing the motion. K. Farrell further clarified her concerns. The language she is questioning is intended outcomes of the supports – and what specifically would be expected for this (in the student's IEP). D. Downer asked whether this could actually be in the student's IEP. B. Marra asked for clarification as to what the issue is with regard to "intended" outcomes. He stated that you don't have to measure that they "got it," you are just stating what the intentions will be for that training. J. Swiss asked whether "the rationale" would be more appropriate. K. Farrell indicated that maybe it is the word 'outcomes' that she does not like. K. Farrell asked if we may be able to revise (2) to say "the general intent" instead of "intended outcomes". R. Burden called for the question.

6 Approved; 9 Opposed; 2 Abstentions.

Motion defeated.

K. Farrell moved to accept languages with amendments to 511 IAC 7-35-3(c) (2). J. Swiss and J. Nally seconded. K. Farrell called for the vote.

13 Approved; 4 Opposed; 2 Abstentions.

Motion carried.

## **Rule 36 GENERAL ADMINISTRATION OF PROGRAMS**

511 IAC 7-36-1: Parent and community participation

K. Farrell moved to accept language as presented. B. Henson seconded.

D. Geeslin called question.

18 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-36-2: Special education program personnel

D. Geeslin moved to accept language as presented. J. Nally seconded.

18 Approved; 0 Opposed; 2 Abstentions.

Motion carried.

511 IAC 7-36-3: Highly Qualified Teachers

K. Farrell moved to accept language as presented. G. Bates seconded.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-36-4: Extended School Year

J. Nally moved to accept language as presented. J. Hammond seconded.

D. Geeslin stated that he was concerned about Subsection 4(e)(2) and (3) and the concerns that ICASE brought forth to the Council. He would like to make a friendly amendment to delete subsections (2) and (3). J. Nally accepted the friendly motion to delete subsections (2) and (3). C. Endres asked if this is Federal language. B. Marra stated that no, it is not. C. Endres asked how the school will be affected if the language is deleted. B. Marra pointed out that summer school is not just considered an extended school year. D. Geeslin withdrew his friendly amendment. Approved by J. Nally.

Question called.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.



511 IAC 7-36-6

J. Swiss moved to accept language as presented. M. Johnson seconded.

511 IAC 7-36-7

J. Swiss moved to accept language as presented. M. Johnson seconded.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-36-8 Transportation

B. Henson moved to accept language as presented. S. Tilden seconded.

K. Farrell asked if weather conditions that cause some buses to run late would be an issue for complaint. B. Marra indicated that it is not the intent of this language to open up such an issue. It is the general/overall transit time on a routine or regular basis.

K. Farrell called for the vote.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-36-9 Medication administration

J. Nally moved to accept language as presented. K. Farrell seconded.

J. Swiss called for the question.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-36-10 State and local assessments

K. Farrell moved to accept language as presented. S. Tilden seconded.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

## **RULE 37 PROCEDURAL SAFEGUARDS**

511 IAC 7-31-1 Notice of procedural safeguards

J. Nally moved to accept language as presented. K. Farrell seconded.

R. Burden asked whether there is a need to discuss what is written at (f)(1). N. Brahm said that it is from federal language except for the referrals to sites.

18 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

~~511 IAC 7-37-2 Notice by electronic mail~~

## **RULE 38 CONFIDENTIALITY OF INFORMATION**

511 IAC 7-38-1 Access to and disclosure of educational records

K. Farrell moved to accept language as presented. J. Nally seconded.

J. Swiss asked for clarification to the comment from SAC with regard to (n). N. Brahm provided clarification.

K. Farrell called for the vote.

18 Approved; 0 Opposed; 1 Abstention.

511 IAC 7-38-2 Procedures for amending educational records

R. Burden moved to accept language as presented. S. Yoder seconded.

19 Approved; 0 Opposed; 1 Abstention.

511 IAC 7-38-3 Confidentiality safeguards in the collection, maintenance, and destruction of educational records

K. Farrell moved to accept language as presented. B. Henson seconded.

R. Burden asked whether the information Margaret Spellings issued this week on FERPA would impact this. N. Brahm indicated that she would look into it and if so, let everyone know at the meeting on November 30<sup>th</sup>.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

## **RULE 39 EDUCATIONAL SURROGATE PARENTS**

511 IAC 7-39-1 Method for determining whether a student needs an educational surrogate parent

511 IAC 7-39-2 Method for assigning an educational surrogate parent

D. Geeslin moved to accept the language at 511 IAC 7-39-1 and 511 IAC 7-39-2 as presented. J. Nally seconded.

R. Burden asked about the training language. N. Brahm indicated that since the revision added Foster Parent into the definition of parent, there is no longer a training requirement. Discussion ensued on where the responsibility lies for training. B. Marra and S. Yoder discussed the potential of a Memorandum of Understanding (MOU) between their agencies to look at collaboratively appointing educational surrogate parents (ESPs).

J. Swiss called for the question.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

## **RULE 40 IDENTIFICATION AND EVALUATION**

511 IAC 7-40-1 Child Find

J. Nally moved to accept language as presented. J. Swiss seconded.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-40-3 Educational evaluations; in general

J. Nally moved to accept language as presented. J. Hammond seconded.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 70-40-6 Determination of eligibility

J. Nally moved to accept language as presented. K. Farrell seconded.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-40-7 Independent educational evaluation

D. Geeslin moved to accept language as presented. J. Hammond seconded.

19 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

#### **Rule 41 ELIGIBILITY CRITERIA**

511 IAC 7-41-1 Autism Spectrum disorder

511 IAC 7-41-2 Blind or low vision

511 IAC 7-41-3 Cognitive disability

511 IAC 7-41-5 Deaf blind

511 IAC 7-41-6 Developmental delay (early childhood)

511 IAC 7-41-7 Emotional disability

511 IAC 7-41-9 Multiple disabilities

511 IAC 7-41-10 Other health impairment

511 IAC 7-41-11 Orthopedic impairment

511 IAC 7-41-13 Traumatic brain injury

J. Nally moved to accept the language at Rule 41 Sections 1, 2, 3, 5, 6, 7, 9, 10, 11, and 13 as presented. J. Swiss seconded.

J. Hammond asked if these definitions were compared to definitions in other states. N. Brahm said that Indiana provided definition when IDEA was silent.

K. Farrell asked for clarification about working with an M-team and whether if the original assignment is to evaluate on the spectrum the school would be required to go back to the parent in order to move forward with the evaluation. N. Brahm said that the school should rule out a cognitive disability. K. Farrell asked how to proceed if the parent says no to the evaluation. N. Brahm indicated that the parent has the right to refuse the evaluation. K. Farrell asked if cognitive disability is defined under Federal language and will this language have a

problem when presented to the State Board. B. Marra stated that the Federal language says 'Mental Retardation'.

J. Nally called the question.

18 Approved; 0 Opposed; 0 Approved.

## **RULE 42 DETERMINATION OF SPECIAL EDUCATION SERVICES**

511 IAC 7-42-1 Local procedures and training

B. Marra requested that this section be removed until further review has been completed.

511 IAC 7-42-2 Notice of case conference committee meetings

S. Yoder moved to accept language as presented. R. Burden seconded.

K. Farrell asked for clarification if the school has contacted the parent and has made reasonable attempts to consider the parents schedule and the parent will not agree to the time of the meeting, would the agency be able to hold the meeting without the parent. J. Swaim stated that she could accept adding 'and the school personnel's schedules' as was proposed by ICASE during public comment. B. Marra said that he agrees with the concerns discussed but if this is an area that the Council really wants to challenge when it could be implemented in other ways.

D. Geeslin called for question.

10 Approved; 7 Opposed; 0 Abstentions.

Motion failed.

C. Endres moved to table 511 IAC 7-42-2 until the November 30, 2007 meeting. J. Hammond seconded. J. Hammond withdrew the second. M. Johnson moved to table 511 IAC 7-42-2 until the November 30, 2007 meeting. C. Endres seconded.

5 Approved; 13 Opposed; 0 Abstentions.

Motion defeated.

R. Burden moved to accept language as presented. J. Nally seconded.

9 Approved; 9 Opposed; 0 Abstentions.

Motion defeated.

R. Burden moved to remove the phrase “taking into consideration the parent’s schedule”. G. Bates seconded.

11 Approved; 6 Opposed; 1 Abstention.

Motion defeated.

D. Downer moved to remove the phrase “taking into consideration the parent’s schedule”. R. Burden seconded.

14 Approved; 3 Opposed; 1 Abstention.

Motion carried.

K. Farrell asked whether the Division has built this section into the CIFM process. B. Marra indicated that he will ask his staff to make sure it is built into the parent survey.

511 IAC 7-42-3 Case conference committee participants

M. Johnson moved to accept language as presented. J. Swiss seconded.

R. Burden asked for clarification on the process when someone asks to be excused from the meeting. B. Marra said refer to the rule that discusses who attends the case conference. N. Brahm said that a decision to excuse required case conference participants requires informed written consent. B. Marra said that the teacher must inform the case conference coordinator or the person setting up the case conference committee. M. Johnson accepted the friendly amendment proposed by N. Brahm. J. Swiss concurred.

18 Approved; 0 Opposed; 0 Abstentions.

Motion carried.

511 IAC 7-42-5 Developing an individualized education program; components and parent copy

R. Burden moved to accept the language as presented. J. Hammond seconded.

18 Approved; 0 Opposed; 0 Abstained

511 IAC 7-42-6 Written notice by the public agency and parental consent

511 IAC 7-42-9

511 IAC 7-42-10

511 IAC 7-42-11

511 IAC 7-42-12

511 IAC 7-42-13

511 IAC 7-42-14

D. Geeslin moved to accept language as presented 5, 6, 9, 10, 11, 12, 13, 14. J. Nally seconded.

K. Mears asked with regard to the reference of Section 11 of this rule. Should it be 12.

D. Geeslin withdrew his motion.

R. Burden moved to accept.

Article 7 Revisions Comments from Public

No public comment at this time.

## **BUSINESS**

B. Kirk requested that a clean copy be sent by U.S. Mail. D. Geeslin concurred.

B. Marra stated that the next meeting of the Council will be on Friday, November 30, 2007, at Indiana Department of Education, 151 W. Ohio Street, Indianapolis, Indiana. The meeting will begin at 8:30 a.m.

C. Endres moved to adjourn. J. Nally seconded.

Meeting adjourned at 3:10 p.m.